IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRP.No. 625 of 1998(B)

RCA.16/1997 of RENT CONTROL APPELLATE AUTHORITY, KASARAGOD
RCP.16/1996 of RENT CONTROL COURT, KASARAGOD

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REVN. PETITIONER/APPELLANT/PETITIONER:

S.A.MOHAMMAD SHAFI, S/O ABBAS,
RESIDING AT CHOORI IN KUDLU VILLAGE
OF KASARAGOD TALUK, P.O.RAMADAS NAGAR.

BY ADV. SRI.K.G.GOURI SANKAR RAI

RESPONDENT/RESPONDENT/RESPONDENT:

B.PADMANABHA, S/O PALANI, BARBER,
KARANDAKKAD, KASARAGOD VILLAGE
AND POST (DIED).

LRs IMPLEADED:

2. SUSHEELA, W/O B.PADMANABHA,
   GANGE ROAD, KUDLU VILLAGE,
   KASARAGOD TALUK, P.O. RAMADAS NAGAR.

3. SELVARAJ, S/O PADMANABHA, DO. DO.

4. DHARMARAJ, DO. DO. DO.

5. SUNDERRAJ, DO. DO. DO.

Impleaded as per order dt. 5.6.06 on CMP 2461/98

BY ADV. SRI.SURESH KUMAR KODOTH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 625 of 1998

ORDER

Balachandran, J.

The landlord is the revision petitioner. He filed R.C.P.No.16/96 before the Rent Control Court, Kasargode for eviction of the respondent/tenant under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'. The reason alleged is that he wants the scheduled building bona fide for conduct of business in cutlery. The respondent/tenant resisted the petition challenging the bona fides in the need advanced and also contending that he is entitled to protection under the second proviso to Section 11(3) of the Act. The Rent Control Court upheld the bona fides of the petitioner in advancing the claim for eviction for starting business in cutlery. But, however, the prayer for eviction was negatived, as the Rent Controller

found that the respondent/tenant is entitled to protection under the second proviso to Section 11 (3) of the Act. The respondent/tenant filed R.C.A. No.14/97 before the Rent Control Appellate Authority, Kasargode challenging the correctness of the findings in favour of the petitioner/landlord as regards the bona fides in the claim advanced under Section 11(3) of the Act. The petitioner/ landlord filed R.C.A.No.16/97 before the appellate authority challenging the correctness of the order of the Rent Controller inasmuch as the benefit of protection under the second proviso to Section 11 (3) of the Act was conferred on the respondent/ tenant. Both the appeals were heard together by the appellate authority and he dismissed both the appeals concurring with the findings of the Rent Controller. Hence, this revision at the instance of the petitioner/landlord.

2. It is vehemently contended before us by the learned counsel for the petitioner that despite

clear admission by the respondent/tenant, when he was examined as RW1 as regards availability of other buildings in the locality for him to shift his barber shop, the authorities below have failed to consider that aspect and have wrongly conferred the benefit of protection under the second proviso to Section 11(3) of the Act on the respondent/ tenant.

3. The respondent, as RW1, has, in chief examination, deposed that there is no other suitable building in the locality to shift his barber shop; that he made enquiries in the locality, but that, for rooms available in the locality rent is claimed at the rate of Rs.600-800 with deposit of a sum of Rs.25,000/- and that he has no capacity to pay rents at such higher rates and also to make deposits as claimed.

4. The respondent cannot hope to remain in the scheduled building for all times paying only a nominal amount as rent and he cannot avoid eviction

on the ground that for any other building he will have to pay rents at higher rates and also will have to make deposit of Rs.25,000/-. Further, in cross-examination, he has deposed that at the time of executing Exhibit A1 deed, there was vacant room on the southern side of the scheduled building; that he does not know who is the owner of the said room, which is still vacant, as he did not make any enquiry in that matter; that even after receipt of notice he has not made enquiries as to whether the said room is available; that, however, the said room is lying vacant for the last one year; that the owner of the said room is from Kudulu Village and that he can come to know as to who is the owner of the said vacant building, if he had made enquiries.

5. The above evidence of RW1 in cross-examination clearly shows that adjacent to the scheduled building another vacant shop room is available, but that he did not make any enquiry at

all as to who is the owner of the said shop room and as to whether the said shop room can be made available for his occupation. To such a tenant, who, despite there being vacant buildings adjacent to the scheduled building, has not made any enquiry at all as to whether it would be available on rent for him to shift his barber shop, the benefit of protection under the second proviso to Section 11 (3) of the Act cannot be conferred and the authorities below have refused to grant eviction illegally conferring the benefit of protection under the second proviso to Section 11(3) of the Act on the respondent/tenant. The orders of the authorities below to that extent are illegal, irregular and improper and deserve to be interfered with in revision under Section 20 of the Act.

In the result, allowing this revision, we direct the respondent/tenant to put the petitioner in vacant possession of the scheduled building as he requires the scheduled building bona fide for

the conduct of business in cutlery. However, with a view to enable the respondent/tenant to make arrangements to shift his barber shop we grant him six months time from today on condition that he shall deposit all rents in arrears before the Rent Control Court positively within one month from today and shall continue to pay or deposit the rents that may fall due hereafter on the due dates itself. He shall also file an affidavit within the said period of one month unconditionally undertaking to surrender vacant possession of the scheduled building to the petitioner on the expiry of the said six months. In case of failure to comply with the above direction, the respondent shall not be entitled to continue in occupation of the building for the said six months and he shall be liable to be evicted immediately on the expiry of the said one month. Vacant possession of the scheduled building shall be surrendered on or before 30.11.2007, in case the respondent complies

with the above directions and entitles himself to the benefit of six months time to surrender vacant possession.

(J.B.Koshy, Judge)

30th May, 2007

(K.P.Balachandran, Judge)

tkv